

## REMARKS

Claims 34, 35, 38, 40, 43, 48 and 50 have been amended. Thus, claims 33-64 remain pending in the application, with claims 33-59 currently under examination. No new matter has been added. Reconsideration and withdrawal of the present objection and rejections in view of the comments presented herein are respectfully requested.

### Informalities

The Examiner noted that claims 38 and 50 depended on cancelled claims, and that claim 43 recited "the nucleic acid is undergoes", rather than "the nucleic acid undergoes." Appropriate corrections have been made.

### Rejections under 35 U.S.C. § 112, second paragraph

Claims 35-36 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite based upon recitation of "natural or artificial derivatives." Claim 35 as amended, as well as claim 34, no longer recite this term.

The Examiner rejected claims 38 and 50 as being dependent on canceled claims 5 and 15, respectively. Claims 38 and 50 as amended are no longer dependent on canceled claims.

Claim 40 was rejected based upon recitation of "the untreated nucleic acid", since there was no antecedent basis for the term "untreated" in claim 33 on which claim 40 depends. Claim 40 as amended no longer recites this term.

Claims 48-49 were rejected as indefinite based upon recitation of "the ligands", since it was allegedly unclear if this term referred to the detector ligand, capture ligand, or both. Claim 48 as amended recites that "the capture ligand, the detector ligand, or both of said ligands are selected from the group consisting of..."

In view of the comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

### Rejection under 35 U.S.C. § 103(a)

Claims 33-59 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Grigg et al. (US 2004/0086944), in view of Christensen et al. (2006/0014144).

The priority date of the present application is January 24, 2003. Grigg et al. is a US Patent Publication that was published on May 6, 2004, and is the US national phase entry of a PCT application that was published on May 16, 2002. Thus, the earliest publication date of Grigg et al. is May 16, 2002, which is less than one year before the priority date of the present application. Thus, Grigg et al. qualifies as prior art only under 35 U.S.C. § 102(e).

35 U.S.C. 103(c)(1) states that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person, or subject to an obligation of assignment to the same person.

The subject matter of the Grigg et al. application and the claimed invention were, at the time the claimed invention was made, both owned by Human Genetic Signatures Pty Ltd., or subject to an obligation of assignment to Human Genetic Signatures Pty Ltd. Thus, Grigg et al. does not qualify as prior art under 35 U.S.C. 103(a). Accordingly, since this reference is not prior art against the pending claims, the obviousness rejection over Grigg et al. in view of Christensen et al. has been rendered moot.

In view of the comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a).

#### No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history

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shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.


### CONCLUSION

Applicants submit that all claims are in condition for allowance. However, if minor matters remain, the Examiner is invited to contact the undersigned at the telephone number provided below. No fees are believed to be due. However, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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